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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all similarly
situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No.: 4:20-cv-03664-YGR-SVK

**PLAINTIFFS' ADMINISTRATIVE
MOTION TO SET HEARING DATE ON
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION (DKT. 609) AND
OTHER PENDING MOTIONS**

Judge: Hon. Yvonne Gonzalez Rogers

1 Plaintiffs respectfully ask the Court to set a September 30, 2022 hearing date for all class
2 certification-related motions, including Plaintiffs' motion for class certification (Dkt. 609),
3 Google's three *Daubert* motions (Dkts. 662-64), Plaintiffs' *Daubert* motion (Dkt. 703), and
4 Plaintiffs' motion to strike (Dkt. 705). These motions are currently scheduled for hearings on
5 September 20 and 27. Plaintiffs understand the Court prefers to hear all of these motions together,
6 and the Court directed the parties to meet and confer regarding a single hearing date.

7 Plaintiffs sought to reach an agreement with Google, but it has become clear that Google's
8 principal objective is to delay—which Plaintiffs worry is intentional and in response to certain
9 comments by the Court. During the *Calhoun v. Google* hearing on August 26, the Court asked
10 whether non-restitutionary disgorgement (i.e., unjust enrichment) is an available remedy for
11 breach of contract. Plaintiffs briefed that issue in this case by citing various cases supporting their
12 entitlement to such damages for breach of contract, including in their motion for class certification
13 (Dkt. 609 at 14), their opposition to Google's motion to exclude Plaintiffs' damages expert (Dkt.
14 700 at 24 & n.8), and in their reply brief in support of their motion for class certification (Dkt. 713
15 at 12). By delaying a hearing in this case, Google seems to be seeking a ruling in *Calhoun* that can
16 be leveraged in this case, before the Court has an opportunity to consider the briefing and argument
17 in this case, including with respect to the issue of damages.

18 Google's focus on delay became apparent with the parties' meet and confer efforts. The
19 parties discussed briefing schedules and hearing dates during the week of August 15. Mao Decl. ¶
20 3. Plaintiffs informed Google of their intention to file one *Daubert* motion, and (to accommodate
21 Google) proposed a briefing schedule that would (1) give Google additional time for its opposition
22 (on top of the standard two weeks), (2) give Plaintiffs only four days for their reply brief (less than
23 the standard one week), and (3) ensure the motion was fully briefed by September 13, one week
24 prior to the currently scheduled September 20 hearing. *Id.* Google's counsel at no point during
25 those discussions informed Plaintiffs of any availability issues with respect to the scheduled
26 September 20 hearing or any other potential hearing date. *Id.* Ultimately, the parties did not reach
27 any stipulated agreement. *Id.*

1 The parties discussed dates again during the following week, with Google this time
 2 misrepresenting its availability. On August 25, 2022, Google asked for an extension of its
 3 deadlines to oppose Plaintiffs' *Daubert* motion and Plaintiffs' motion to strike, from September 6
 4 to September 14. Mao Decl. Ex. 1. Plaintiffs responded that they are "not opposed to Google's
 5 request for an extra week, provided Google stipulate that the parties do not wish to move the
 6 scheduled hearing date (whether September 20 or September 27)." *Id.* Google then sent Plaintiffs
 7 a draft stipulation, which included a provision stating: "***Google has represented that it will not***
 8 ***seek to reschedule the September 20 or September 27 hearing date*** based on these stipulated
 9 changes to these briefing schedules." Ex. 2 at 2 (emphasis added).

10 During the August 26 hearing before this Court in the related *Calhoun* matter, Google
 11 (represented by the same counsel team) asked the Court about the class certification hearing in this
 12 case, and told the Court that it is unavailable on both September 27 and October 4. Mao Decl. ¶ 4.
 13 After two weeks of meeting and conferring, this was the first time that Google's counsel stated
 14 that they are unavailable on either of those days. *Id.* To the contrary, as noted above, Google's
 15 counsel had previously promised Plaintiffs that Google would ***not*** seek to move the September 27
 16 hearing date. Contrary to that prior representation, and without any prior notice to Plaintiffs, that
 17 is what Google proposed to the Court, during the *Calhoun* hearing.

18 Following the *Calhoun* hearing, consistent with the Court's instruction to try to reach an
 19 agreed upon date, Plaintiffs asked Google whether it can be available for the hearing in this case
 20 on Friday, September 23, or Friday, September 30. Mao Decl. ¶ 5. Google declined, claiming that
 21 it is unavailable on either of those days. *Id.*

22 Plaintiffs now respectfully ask the Court to set a consolidated hearing for September 30.
 23 That date comes after the currently scheduled September 20 and 27 hearings. A September 30
 24 hearing will allow time for Google to obtain its requested extension to oppose Plaintiffs' *Daubert*
 25 motion and motion to strike. Alternatively, Plaintiffs are amenable to proceeding on September 23
 26 or the currently scheduled September 20 hearing, in which case Google would need to submit its
 27 opposition briefs on a standard two-week timeframe. For any hearing date, Plaintiffs are amenable
 28

1 to any briefing schedule for their *Daubert* motion and motion to strike. Plaintiffs will take less
 2 time for their reply briefs if helpful to the Court. The motion for class certification and Google's
 3 three *Daubert* motions are already fully briefed. *See* Dkts. 710, 711, 713, 715.

4 Plaintiffs propose the following briefing schedule for Plaintiffs' *Daubert* motion and
 5 motion to strike and hearing date options (for all class-related motions), noting that Option 1 is
 6 intended to provide Google with its requested extension for its opposition briefs.¹ Any of these
 7 options is acceptable to Plaintiffs, or alternatively whatever date is most convenient for the Court.

| 8 Deadline | Option 1 | Option 2 | Option 3 |
|------------------------|-----------------|-----------------|-----------------|
| 9 Google's oppositions | September 14 | September 6 | September 6 |
| 10 Plaintiffs' replies | September 18 | September 9 | September 9 |
| 11 Hearing date | September 30 | September 23 | September 20 |

12 Plaintiffs recognize that, during the *Calhoun* hearing, the Court initially proposed moving all of
 13 the motions to September 27, but Plaintiffs understand that Google's counsel is unavailable on that
 14 date, so Plaintiffs have not included it as an option above. The same is true for October 4.

15 Plaintiffs understand that Google will oppose this motion and ask for the hearing to be set
 16 on either October 11 or October 25. Mao Decl. ¶ 6. Plaintiffs see no reason why Google cannot
 17 make itself available on September 30 or September 23, particularly when Plaintiffs are already
 18 accommodating Google's lack of availability on both September 27 and October 4, and also sought
 19 to accommodate Google with additional time for briefing. Plaintiffs expect Google has at least
 20 reserved September 20, the currently scheduled hearing date for class certification.

21 As noted, Plaintiffs seek to have the Court hear Plaintiffs' motion for class certification
 22 sooner in light of apparent overlapping issues with the *Calhoun* matter. Plaintiffs are amenable to
 23 further briefing on any issues, including the availability of certain damages for specific claims,
 24 should the Court find further briefing helpful. At a minimum, in light of this and other issues that
 25 overlap *Brown* and *Calhoun*, Plaintiffs hope the hearing on their motion can take place as soon as
 26 possible. While Plaintiffs of course defer to the Court in terms of setting a date that is convenient

27 ¹ Google has requested an eight-day extension for its opposition briefs. Ex. 1.

1 for the Court, Plaintiffs see no reason to wait until October 11, particularly when Plaintiffs are
2 already accommodating Google's lack of availability on both September 27 and October 4.

3
4
5 Dated: August 29, 2022

Respectfully submitted,

6 By: /s/Mark Mao

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